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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,822	10/30/2003	Yoshihiro Iwashita	117640	7183
25944	7590	10/20/2004	EXAMINER	
OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320			CHANG, CHING	
		ART UNIT		PAPER NUMBER
				3748

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/695,822	IWASHITA ET AL.
Examiner	Art Unit	
Ching Chang	3748	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,6,7,9 and 10 is/are rejected.
- 7) Claim(s) 4,5,8,11 and 12 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>11/24/2003</u> .	6) <input type="checkbox"/> Other: ____.

**DETAILED ACTION**

This Office acknowledges the Preliminary Amendment filed on October 30, 2003, therefore, the Office action mailed on September 14, 2004 is withdrawn.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. ***Claims 1-2 are rejected under 35 U.S.C. 102(e) as being anticipated by Muratia et al. (US Patent 6,637,386).***

Murata discloses a device (31) for controlling an internal combustion engine with a variable valve system (8a) characterized in that, while the piston descends just after the combustion in the cylinder (See Col. 6, line 20 through Col. 13, line 58), the intake valve (7a) is opened by the variable valve system for intake valve such that the intake air is supplied into the cylinder from the engine intake system (12, 14, 11), wherein said intake valve is opened when the secondary air is required in the engine exhaust system (18, 20).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. ***Claims 3 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murata (as applied to claims 1 and 2/1 above) in view of Norton et al. (US Patent 6,164,931).***

Murata discloses the invention, however, fails to disclose the control device being used to open the intake valve when the cylinder pressure is lower than the atmospheric pressure.

The patent to Norton on the other hand, teaches that it is conventional in the art of engine with a turbocharger, to have utilized the downward movement of piston (18) to lower down cylinder pressure below atmospheric pressure (See Col. 3, line 24 through line 33).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized the downward movement of piston to lower down the cylinder pressure than atmospheric pressure as taught by Norton as a control parameter in the Murata control device to open the intake valve, since the use thereof would provide an improved control device to introduce air into an engine cylinder.

5. *Claims 6, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murata in view of Norton (as applied to claims 1, 2/1, 3/1 above), and further in view of Shiraishi et al. (US Patent 6,530,361).*

The modified Murata device, however, fails to disclose said variable valve system being an electromagnetic actuator.

The patent to Shiraishi on the other hand, teaches that it is conventional in the art of engine control method, to have utilized an electromagnetic actuator (131, 132, 133) to drive an intake valve (12).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized the electromagnetic actuator as taught by Shiraishi in the modified Murata device, since the use thereof would provide an alternative engine valve control device.

#### *Allowable Subject Matter*

6. Claims 4-5, 8, and 11-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### *Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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- Majima (US Patent 6,761,147).
- Hitomi et al. (US Patent 5,421,308).

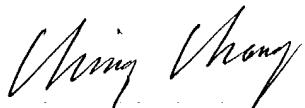
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ching Chang whose telephone number is (703)306-3478.

The examiner can normally be reached on M-Th, 7:00 AM -5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Denion can be reached on (703)308-2623. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patent Examiner



Ching Chang

Thomas Denion  
THOMAS DENION  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700